

COREY THOMAS,

Petitioner

V.

WARDEN R. MARTINEZ,

Respondent

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CIVIL NO. 1:10-CV-1217

(Judge Rambo)

(Magistrate Judge Carlson)

MEMORANDUM

Before the court is a July 19, 2010 report and recommendation of the magistrate judge in which he recommends that the petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2241 be dismissed on the grounds that this court does not have jurisdiction to consider the petition. On August 2, 2010, Petitioner filed objections to the report and recommendation. On August 13, 2010, Respondent filed a response to Petitioner's objections. Petitioner filed a reply on September 3, 2010 and the matter is ripe for disposition.

Petitioner challenges his sentence that was arrived at, in part, by his classification as a career criminal. This issue is a sentencing enhancement and must be raised by way of a petition pursuant to 28 U.S.C. § 2255 which Petitioner has unsuccessfully raised twice before the sentencing court in North Carolina.

Petitioner argues that he is “innocent” of being a career offender and that he can present evidence that he was innocent as to some of his state convictions which made him eligible for career offender status. Petitioner had every opportunity to challenge his prior convictions before the sentencing court at the time of sentence and in his § 2255 petitions. His failure to do so does not render the remedy afforded by 28 U.S.C. § 2255 inadequate or ineffective.

The report and recommendation of the magistrate judge will be adopted.
An appropriate order will be issued.

s/Sylvia H. Rambo
United States District Judge

Dated: September 14, 2010.

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ORDER

In accordance with the accompanying memorandum, **IT IS HEREBY ORDERED THAT:**

- 1) The court adopts the report and recommendation of Magistrate Judge Carlson.
- 2) The petition for writ of habeas corpus is denied.
- 3) This court declines to issue a certificate of appealability.
- 4) The Clerk of Court shall close the file.

s/Sylvia H. Rambo
United States District Judge

Dated: September 14, 2010.